

**From:** Conrad Gempf  
**To:** Microsoft ATR  
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**Subject:** Microsoft Penalty Phase

As an American citizen living abroad, I have great hope that the United States courts will accomplish something that I see for myself no other body can: restore competition and fair play to the computer industry. My "day job" is not directly in computers, but in theological education. However, I have been involved with writing for computer journals both in print and online for some time. I think most people in the industry are under no illusion about Microsoft's claims to want "to innovate". They have systematically moved into every lucrative field that they could by copying or buying out the competition and then leveraging the new product with their vast operating system monopoly. We have seen this happen with their buying of a web-browser and renaming it Explorer to compete with Navigator, we've seen it with their copying of the Palm handhelds, and nowadays we're seeing it with the launch of yet another games platform, with promises of integration to Windows and their new vision of a corporately-controlled internet and with their efforts in media players in Windows.

They maintain their monopoly in a way which quite evidently has strangled the competition. The numbers speak volumes.

Even people who think that the Microsoft Windows operating system is superior to the Mac operating (and those people are not that easy to find) do not think that, on merits alone, it would deserve 95% of the market. It's not *\*that\** much better. Consumers simply don't have a choice.

Even people who think that Microsoft Word is a better word processor than the pre-Windows 95 market leader Corel Word Perfect do not believe that it is 98% better.

Microsoft has and keeps the monopolistic market share that it has not because consumers choose them, but because manufacturers and consumers are made to choose them.

Microsoft have, we all know, broken agreements in the past. In the face of having been found guilty and having had that conviction upheld unanimously, they are still quite publicly maintaining that they have not done anything wrong. They cannot, therefore, be relied upon to conform willingly with the spirit of a voluntary penalty -- they do not, apparently, understand what the courts are saying to them about their past behaviour.

A just and effective penalty would have to restore the possibility of

competition. One of the best tests of a penalty would be the possible effects in the marketplace in terms of restoring competition and allowing the alternatives of the Microsoft Windows operating system to regain marketshare that reflects how consumers regard them on their merits.

In many ways, the structural remedy seemed to me ideal, both in terms of what it would accomplish and in terms of how little continual monitoring would have to be done by other people. I recognise that, for some reason, this has been withdrawn from consideration. But something needs to be done that is more drastic than the proposals that some of the States have accepted.

Saying "You must behave lawfully from now on" is not a penalty, it doesn't go beyond what any ordinary company would have to do. A repeat offender like Microsoft needs to be penalised in such a way as to artificially restore the balance it has wrongfully tipped in its favour, and preferably in ways that quickly give a boost to those competitors, like Apple, who have been directly harmed by their practices.

Thank you for your time and consideration.

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